



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 14 2008

VIA FAX AND CERTIFIED MAIL

**Brian G. Svoboda, Esq.
Ezra W. Reese, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011**

**RE: MUR 5840
Ellen Simon for Congress and
Gael Summer, in his official
capacity as treasurer**

Dear Messrs. Svoboda and Reese:

Based on a complaint filed with the Federal Election Commission (the "Commission"), information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, Ellen Simon for Congress and its treasurer, in his official capacity as treasurer, the Commission found reason to believe that your clients violated 2 U.S.C. §§ 434(b) and 441a-1(b).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

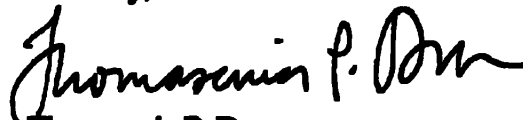
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You may also request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) **MUR 5840**
5 Ellen Simon for Congress)
6 and Gael Summer, in his official)
7 capacity as treasurer)
8

9 **GENERAL COUNSEL'S BRIEF**

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11 **I. STATEMENT OF THE CASE**

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13 On August 1, 2007, the Federal Election Commission found reason to believe that Ellen
14 Simon for Congress and Carter Olson, in his official capacity as treasurer, (the "Committee")
15 violated 2 U.S.C. § 434(b) by misreporting a \$50,000 loan from Ellen Simon (the "Candidate")
16 and a \$225,000 bank loan guaranteed by the Candidate, as contributions from the Candidate.¹
17 The Commission also found reason to believe that the Committee violated 2 U.S.C. § 441a-1(b)
18 by failing to timely file a 24-Hour Notice of Expenditure from Candidate's personal funds (FEC
19 Form 10). Based on the following analysis, this Office is prepared to recommend that the
20 Commission find probable cause to believe that Ellen Simon for Congress and Gael Summer, in
21 his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a-1(b).

22 **II. ANALYSIS**

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24 **A. The Loans and the 24-Hour Notice**

25 Ellen Simon for Congress is a political committee within the meaning of 2 U.S.C.
26 § 431(4), and the authorized committee for Ellen Simon, a 2006 Congressional candidate in
27 Arizona's 1st congressional district. On July 14, 2006, the Committee filed its first report, the
28 2006 July Quarterly Report. In that report, the Committee disclosed that Ms. Simon made two

¹ Gael Summer has replaced Carter Olson as treasurer of the Committee. Accordingly, Mr. Summer has been substituted as the named respondent treasurer in this matter.

1 contributions to her campaign: a \$50,000 contribution on May 5, 2006 and a \$225,000
2 contribution on June 29, 2006. The Committee reported both transactions as contributions made
3 by the candidate from her own personal funds.² However, the \$50,000 contribution was actually
4 a loan from the candidate and the \$225,000 contribution was actually funded by a draw on a
5 revolving line of credit from Wells Fargo Bank, which was secured by Ms. Simon's residence.

6 On August 31, 2006, the Committee filed an amendment to the 2006 July Quarterly
7 Report, in which it re-characterized the \$50,000 contribution made on May 5th as a loan from the
8 Candidate and the \$225,000 contribution made on June 29th as a loan from Wells Fargo Bank,
9 guaranteed by the Candidate. The following day, the Committee filed a second amended 2006
10 July Quarterly Report, to which it attached a copy of the Wells Fargo Bank loan agreement. In
11 memoranda attached to the each of the amended reports, the Committee explained, "loans to the
12 Committee were initially reported as Candidate Personal Funds in error" and, with respect to the
13 Wells Fargo transaction, stated that it was "Originally reported as a loan from the Candidate in
14 error. This deposit was in fact a drawdown from a loan guaranteed from [sic] the Candidate."

15 On August 21, 2006, Ms. Simon made a second draw on the line of credit, in the amount
16 of \$250,000, and again contributed the money to her Committee. The \$250,000 expenditure
17 brought the total amount of personal funds expended by the Candidate to \$525,000. Six days
18 later, on August 27, 2006, the Committee filed a 24-Hour Notice, in which it disclosed the
19 \$250,000 expenditure.

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² The term "personal funds" includes amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest. 11 C.F.R. § 100.33.

1. Reporting of Loans

The Act requires an authorized committee to report contributions from its candidate, loans made or guaranteed by its candidate and all other loans. 2 U.S.C. § 434(b)(2)(B), (G), and (H). These loans must be reported on a Schedule C. 11 C.F.R. § 104.3(d). When a candidate obtains a loan from a lending institution and uses those funds in his or her campaign, the loan must be itemized as a loan from the lender to the committee, rather than as a loan from the candidate to the committee. 2 U.S.C. § 434 (b)(3)(E); 11 C.F.R. § 104.3(a)(3)(vii)(B) and (a)(4)(iv). Details of such loans must be reported on a Schedule C-1. 11 C.F.R. § 104.3(d)(1).³

In this instance, the Candidate's \$50,000 loan and the \$225,000 draw on the Wells Fargo Bank home equity line of credit were first reported, erroneously, as contributions from the Candidate, rather than loans. Subsequently, the Committee filed amended reports that disclosed that the funds consisted of a loan from the Candidate and a bank loan. Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 434(b) by failing, in the original 2006 July Quarterly Report, to report the \$50,000 as a loan from the Candidate to her campaign and the \$225,000 as the proceeds of a home equity line of credit from Wells Fargo Bank to the Candidate.

³ Schedule C-1 requires that the following information be disclosed: (1) the date and amount of the loan or line of credit; (2) the interest rate and repayment schedule of the loan, or each draw on the line of credit; (3) the types and value of traditional collateral or other sources of repayment securing the loan or line of credit and whether that security interest is perfected; and (4) an explanation of the basis of the credit established if the bases in (3) are not applicable. 11 C.F.R. § 104.3(d)(1)(i)-(iv). The committee treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 11 C.F.R. § 104.3(d)(2). The lending institution must sign the statement on Line I, attesting that: the terms of the loan and other information regarding the extension of the loan are accurate, the terms and condition of the loan are no more favorable than those extended to similarly situated borrowers, the lending institution is aware that the loan must be made on a basis which assures repayment, and that in making the loan it has complied with the regulations set forth at 11 C.F.R. §§ 100.82 and 100.142.

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2. 24-Hour Reporting Requirement

In a Request for Additional Information ("RFAI") sent to the Committee, dated September 19, 2006, RAD explained that 24-Hour Notices must be filed when a candidate for the House of Representatives makes more than \$350,000 in expenditures from personal funds and noted that the 24-Hour Notice the Committee filed on August 27, 2006, appeared to have been filed outside of the 24-hour period. In response to the RFAI, a consultant to the Committee confirmed that the Committee had exceeded the \$350,000 reporting threshold on August 21, 2006, and stated that Committee staff had not notified him of the expenditure that triggered the 24-hour reporting requirement until August 27, 2006.

When a candidate for the United States House of Representatives "makes or obligates to make an aggregate amount of expenditures from personal funds in excess of \$350,000 in connection with any election" the candidate or his authorized committee must notify the Commission by filing a notification of the expenditure with the Commission within twenty-four hours after exceeding the threshold. 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b). An expenditure from personal funds includes direct contributions as well as loans made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A); 11 C.F.R. § 400.4; *see also* MUR 5730 (Charles Taylor for Congress); MUR 5623 (Mike Crotts for Congress). The committee must also send copies of the FEC Form 10 to each opposing candidate and the national party of each such candidate within 24 hours of the expenditure. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. § 400.21(b).


1 In this matter, the 24-Hour Notice was filed five days late. The Candidate made the
2 second draw on the Wells Fargo home equity line of credit and forwarded the resulting \$250,000
3 to her committee on August 21, 2006. The \$250,000 caused the Candidate to exceed the
4 \$350,000 reporting threshold and triggered the requirement that her Committee file notice of the
5 transaction with the Commission and opposing candidates and their parties within 24 hours, i.e.,
6 by August 22, 2006. The Committee did not file its 24-Hour Notice until August 27, 2006.


7 The Committee did not file a 24-Hour Notice of Expenditure from Candidate's Personal
8 Funds in a timely fashion. Therefore, this Office is prepared to recommend that the Commission
9 find probable cause to believe that Ellen Simon for Congress and Gael Summer, in his official
10 capacity as treasurer, violated 2 U.S.C. § 441a-1(b).


11 **III. GENERAL COUNSEL'S RECOMMENDATION**

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13 Find probable cause to believe that Ellen Simon for Congress and Gael Summer, in his
14 official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a-1(b).

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17 1/11/2008
18 Date

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